



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

WATER AND WASTEWATER

IN THE MATTER OF THE PETITION OF)
MONTAGUE SEWER COMPANY FOR AN)
INCREASE IN RATES FOR SEWER)
SERVICE AND FOR A PHASE II)
INCREASE IN RATES)

ORDER MODIFYING INITIAL
DECISION AND ADOPTING
STIPULATION OF SETTLEMENT

BPU DOCKET NO. WR03121035
OAL DOCKET NO. PUCRA 01351-2004N

(SERVICE LIST ATTACHED)

BY THE BOARD:

On December 31, 2003, pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.11 and 14:1-5.12, Montague Sewer Company, (Montague or Company) a public utility of the State of New Jersey filed a petition with the Board of Public Utilities (Board) seeking approval of an increase in rates for wastewater service, including Phase II treatment to recover the cost of capital improvements associated with the rehabilitation of its leach fields. Petitioner amended its petition on April 28, 2004, to reflect a change in the amount of revenues requested in the Phase I portion of the proceeding.

Montague services approximately 276 wastewater customers in the Township of Montague, Sussex County, New Jersey. Utilities, Inc., whose principal office is located in Northbrook, Illinois, is the parent company of Montague¹.

The Company's rate request, as amended, would have resulted in an increase in total Company revenues of \$281,375 or 270% over current revenues of \$104,026 for the test year period ending December 31, 2003.

Administrative Law Judge (ALJ) Michael Mehr issued his Initial Decision recommending an overall increase in revenues of \$47,900 or 46.15%. This revenue increase is comprised of a partial stipulation embodied in a Memorandum of Understanding (MOU) executed by the Company, the Division of the Ratepayer Advocate (RPA) and Board Staff (Staff), (the Parties) of \$10,600 or 10.21% relating to the base rate case, excluding sludge hauling costs, and an additional increase of \$37,300 or 35.93% relating to sludge hauling costs incurred, along with an amortization period of 20 years and a 5.5% cost of capital for this deferred expense in lieu of a rate of return.

¹ AIG Highstar Capital has announced that it will acquire Utilities, Inc. The transaction for the purchase of Utilities, Inc., is expected to close in early 2006.

The sludge hauling costs were incurred due to an Order by the New Jersey Department of Environmental Protection (DEP) to remove and properly dispose of all the sewage from the Company's leach fields rather than discharge the sewage into the Company's underground leach fields.

ALJ Mehr recommended that a Phase II proceeding be instituted to consider the recovery of the cost to reconstruct the leach fields which will replace the sludge hauling costs.

Subsequent to the filing of ALJ Mehr's Initial Decision, the Parties engaged in settlement negotiations. Those negotiations resulted in an overall increase of \$39,116 or 37.69%, of which \$28,516 or 27.47% is related to sludge hauling costs incurred along with an amortization period of 20 years and no carrying costs, and the MOU of \$10,600 or 10.21%. This equates to a total revenue requirement of \$142,906.

PROCEDURAL HISTORY

On January 12, 2004, the Board transferred this matter to the Office of Administrative Law (OAL) and the case was assigned to ALJ Stephen Weiss. A pre-hearing conference was conducted by ALJ Weiss on March 24, 2004. Thereafter, the case was transferred to ALJ Mehr.

A public hearing was held on May 27, 2004, at Township Hall, located in the Township of Montague. About 60 individuals attended the public hearing, of which approximately 25 people spoke and objected to the large increase and the adverse financial impact it would pose upon them. There were also two water quality complaints or comments addressed at the public hearing. The public further commented about the rate increase that was previously granted to Montague Sewer Company.

ALJ Mehr held evidentiary hearings on October 21 and 22, 2004. The MOU was presented to ALJ Mehr at the hearing. ALJ Mehr identified four issues for decision and directed the Parties to brief the following issues: (1) whether sludge hauling costs were prudently incurred; (2) whether carrying costs or interest on the deferred balance of sludge hauling costs should be permitted, and, if so, how much; (3) the appropriate amortization period for the sludge hauling costs; and (4) whether the capital cost of the leach field should be considered in a Phase II proceeding when the completion date is uncertain.

The Parties submitted initial briefs and reply briefs regarding the four areas as directed by ALJ Mehr.

ALJ Mehr issued his Initial Decision on May 3, 2005 which incorporated the MOU. Exceptions to the ALJ's Initial Decision were submitted on May 23, 2005.

ALJ Mehr recommended an overall increase of approximately \$47,900 or 46.15% over current rates. The ALJ recommended the following:

- a. Limiting the recovery of state mandated hauling expenses and allowing a recovery of sludge hauling expenses of \$446,000.
- b. An amortization of recognized sludge hauling expenses over 20 years, akin to amortization of a capital asset.
- c. A cost of capital for deferred expenses at 5.5% at reasonable debt cost rather than stipulated rate of return.
- d. A Phase Two for recognition of asset improvements required by DEP to replace hauling expenses.
- e. That Company management has come to New Jersey in good faith with capital investments to improve small water and sewer operations and is not guilty of fault or misconduct.
- f. That recognition of hauling costs as specified above does not change the stipulation rate of return.
- g. That non-recognition of carrying costs on deferred hauling expense would result in a zero rate of return.

In the Exceptions and Reply Exceptions to the ALJ's Initial Decision, the RPA and Board Staff recommended that the Board disallow all sludge hauling costs incurred by the Company beyond October 31, 2003, because they were not prudently incurred. The RPA and Board Staff recommended no carrying costs related to the sludge hauling costs and further recommended that a Phase II proceeding be denied. The RPA and Board Staff agreed with the ALJ that a 20-year amortization period is appropriate.

The Company filed Exceptions and Reply Exceptions to the ALJ's Initial Decision and argued that all of its sludge hauling costs of \$540,000 be recoverable. The Company also addressed that carrying costs related to the sludge hauling costs be added if there is to be a 20-year amortization period.

On June 8, 2004, the Board requested an extension of time to issue its Decision and Order regarding this matter and was granted a forty-five (45) day extension to August 7, 2005. On August 1, 2005, the Board requested an additional forty-five (45) day extension of time to September 21, 2005 to issue its Decision and Order.

STIPULATION

Subsequent to the issuance of the ALJ's Decision, the Parties held settlement discussions. As a result of those settlement discussions, the Parties reached a settlement of the issues that were still in contention among the Parties (Stipulation or Settlement).

As more fully set forth in the attached Stipulation², the Parties agreed that:

- 1 Montague Sewer Company's total rate base for purposes of this proceeding is \$260,914. (Settlement Paragraph 11).

² Cited paragraphs referenced are in the settlement documents. This is only a summary, the full settlement document controls, subject to the Board's findings and conclusions contained herein.

2. An overall rate of return of 8.28% is appropriate, including a return on equity of 9.75%. (Settlement Paragraph 12).
3. An overall rate of return of 8.28% results in an additional revenue requirement of \$10,600 above test year revenues of \$103,790 or 10.21% to account for all rate base, rate of return, revenue and expense items except for the deferred wastewater hauling expenses and the additional capital costs. (Settlement Paragraph 12).
4. The Company will be permitted to amortize its deferred sludge hauling costs over a 20-year period without interest in the amount of \$500,000. This amortization will result in a reduction from the annual amount recommended by ALJ Mehr to \$28,516 per year. The combined revenue increase totals \$39,116 and equates to a rate increase of 37.69%. (Settlement Paragraph 13).
5. The annual revenue increase of \$39,116 is the level of revenue appropriate to ensure that Montague Sewer Company needs to continue to provide safe, adequate and proper service to its wastewater customers. (Settlement Paragraph 14).
6. The attached revised tariff pages (Exhibit B) reflect the required changes in rates which the Parties request that the Board approve along with the Stipulation. The Parties agree that the attached tariff pages reflecting the agreement of the Parties should be adopted by the Board in their entirety. (Settlement Paragraph 15).

DISCUSSIONS AND FINDINGS

The Board, having reviewed the findings made by the ALJ in his Initial Decision, and having reviewed the terms of the Stipulation submitted by the Parties, HEREBY ADOPTS the Stipulation of the Parties. The Board FINDS that the Parties have voluntarily agreed to the Stipulation and that the Stipulation fully disposes of all issues in this proceeding and is consistent with the law.

The Board HEREBY MODIFIES the ALJ's Initial Decision and ADOPTS the Stipulation attached, hereto, as its own incorporating by reference the terms and conditions as if fully set forth at length herein, subject to the following:

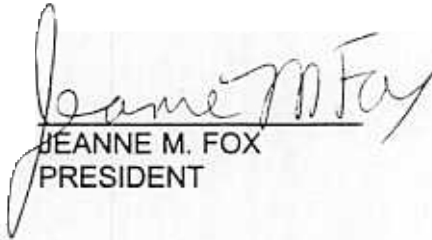
- a) Montague Sewer Company's total rate base for purposes of this proceeding shall be \$260,914.
- b) An overall rate of return shall be 8.28%, and shall be inclusive of a return on equity of 9.75%.
- c) An overall rate of return of 8.28% shall result in an additional base revenue requirement of \$10,600 or 10.21% above test year revenues of \$103,790 or 10.21% (MOU).
- d) The Company shall be permitted to recover \$500,000 in sludge hauling costs amortized over a 20 year period with no carrying costs.
- e) The sludge hauling costs shall result in an additional annual revenue requirement of \$28,516 or 27.47% above test year revenues of \$103,790.

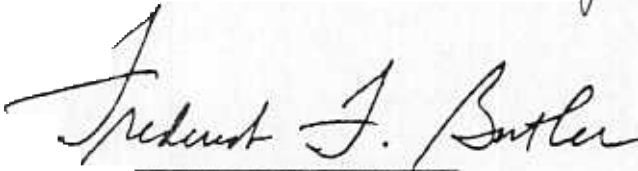
- f) The total annual revenue increase shall be set at \$39,116 or 37.69% and shall be sufficient to permit the Company to continue to provide safe, adequate and proper utility service to its wastewater customers.
- g) The pro forma revenue requirement shall be set at \$142,906.
- h) A complete tariff reflecting the terms and conditions of the Stipulation shall be submitted to the Board within 10 days of the date of this Board Order.

The effective date of this Order is as dated below.

DATED: 9/15/05

BOARD OF PUBLIC UTILITIES
BY:

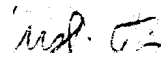

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

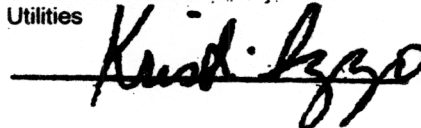

CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



I/M/O THE PETITION OF MONTAGUE SEWER COMPANY
FOR APPROVAL OF AN INCREASE IN ITS RATES

BPU DOCKET NO. WR03121035
OAL DOCKET NO. PUCRA 01351-2004N

SERVICE LIST

Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA
PO Box 1018
Somerville, NJ 08876-1018

Susan E. McClure, Esq.
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
PO Box 46005
Newark, NJ 07101

Alex Moreau, DAG
Babette Tenzer, DAG
Department of Law and Public Safety
Division of Law
124 Halsey St. 5th Floor
P.O. Box 45029
Newark, NJ 07101

Dante Mugrace, Bureau Chief
Division of Water & Wastewater
Board of Public Utilities
Two Gateway Center, 8th Floor
Newark, NJ 07102

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION
OF MONTAGUE SEWER COMPANY
FOR AN INCREASE IN RATES FOR
SEWER SERVICE

Docket No. WR03121035(Sewer)

) OAL Docket No. PUCRA01351-2004N
)
) **STIPULATION OF SETTLEMENT**

APPEARANCES

Walter G. Reinhard, Esq., for Petitioner
(Norris, McLaughlin & Marcus, PA, Attorneys)

Susan E. McClure, Esq., Assistant Deputy Ratepayer Advocate,
for the Division of the Ratepayer Advocate
(Seema M. Singh, Esq., Ratepayer Advocate)

Babette Tenzer, Esq. and Alex Moreau, Esq., Deputy Attorneys General,
for Staff of the Board of Public Utilities
(Peter C. Harvey, Esq., Attorney General of New Jersey)

I. **Introduction**

1. On December 31, 2003, Montague Sewer Company (hereinafter "Petitioner" or the "Company") filed a petition with the Board of Public Utilities ("Board") pursuant to N.J.S.A 48:2-21 and N.J.A.C. 14:1-5.11 and 5.12 which, as subsequently amended, requested an increase in rates for sewer service of approximately \$281,378 or 270% above revenues for the test year ended December 31, 2003. Petitioner also requested a Phase II increase for sewer service to account for capital expenditures described below.

2. The major component of the Amended Petition for a sewer rate increase was the deferred costs of wastewater hauling and disposal required by New Jersey Department of Environmental Protection ("NJDEP") to remove wastewater or sludge which the Company was unable to dispose of because two of its leach fields failed during the winter of 2003. When the

underground disposal systems failed, NJDEP required Montague Sewer to truck the sludge to another facility and to rehabilitate the leach fields. A Phase II increase was requested to account for the capital costs necessary to rebuild the leach fields that failed and two other fields which are in jeopardy.

II. Procedural History

3. On March 24, 2004, a prehearing conference was held by telephone before Hon. Stephen Weiss, ALJ and a Prehearing Order was issued by Judge Weiss. Thereafter, the case was transferred to Hon. Michael J. Mehr, ALJ.

4. After proper notice, a public hearing was held before Judge Mehr on May 27, 2004 at Township Hall in the Township of Montague. A number of customers and one public official appeared and presented statements opposing the level of the proposed rate increase. Neither the Township nor any other party intervened in the case.

5. Hearings were originally scheduled for June 2004, but settlement of the Montague Water Company rate case, filed contemporaneously with this case, and the delay in issuance of the sewer permit to reconstruct the leach fields resulted in the postponement of the hearings with the consent of all parties until October 21 and 22, 2004. The Company, the Division of the Ratepayer Advocate ("Ratepayer Advocate") and the Staff of the New Jersey Board of Public Utilities ("Staff") (collectively the "Parties") appeared before Judge Mehr on June 23, 2004, to put their understandings on the record.

6. At the evidentiary hearings in October, five witnesses presented testimony and were cross-examined. Mr. Carl Daniel, Regional Director and Vice President of Operations for subsidiaries of Utilities, Inc. in several states, including New Jersey, testified to operations issues on behalf of Petitioner. Mr. David Clark, a Licensed Professional Engineer, employed by The

Entech Group, described the sewer permit process and the application on file with NJDEP. Mr. Steven Lubertozzi, Director of Regulatory Accounting for Utilities, Inc., presented accounting evidence of the deferred sludge hauling costs and of the proper ratemaking treatment of those costs for Petitioner. Andrea Crane of the Columbia Group presented testimony on behalf of the Ratepayer Advocate regarding the treatment of the sludge expenses. Howard Woods, of Howard J. Woods, Jr. & Associates, presented engineering testimony regarding the permit application and the prudence of the sludge hauling expenses for the Ratepayer Advocate.

7. Prior to the hearings, Petitioner, the Ratepayer Advocate, and Staff, as a result of analyzing the testimony and exhibits submitted by Petitioner and the Ratepayer Advocate, conferences, negotiations, responses to discovery requests, and the public hearing, conducted negotiations to limit the issues for trial. The negotiations resulted in an agreement as to many of the outstanding issues which was incorporated into a Memorandum of Understanding ("MOU") presented to Judge Mehr at the first day of evidentiary hearings in the matter and marked Exhibit P-3.

8. The MOU made critical rate base and rate of return findings which were adopted by Judge Mehr, and supports an additional revenue requirement of \$10,600 or approximately 10% above current revenues. The MOU is attached here and made a part hereof as Exhibit A. The findings from the MOU are incorporated into the Stipulation below.

9. The issues reserved for evidentiary hearings were limited to the following: "(a) Whether rate base should reflect the capital costs of the improvement to leach fields #3A/3B and, if applicable 2A/2B and depreciation reserve brought forward to the appropriate date; and (b) Deferred wastewater hauling costs will be examined to determine the appropriate amortization period, interest rate, if any, and overall annual expense increase." MOU, pp. 4-5. Evidentiary

hearings were conducted on October 21 and 22, 2004. Pursuant to Judge Mehr's instructions, Legal Memoranda were submitted by the Parties on November 19, 2004, with Replies filed on December 13, 2004. Oral argument was held before Judge Mehr on November 22, 2004. The Initial Decision in this matter was rendered on May 3, 2005 and mailed to the Parties on May 9, 2005.

10. Judge Mehr's Initial Decision recommended an increase for wastewater hauling costs, (including 5.50% interest or carrying costs), in the total amount of \$446,000 yielding an annual increase of approximately \$37,300 per year over the 20 year amortization period. This recommended increase was in addition to the MOU increase of \$10,600 and would have resulted in an overall rate increase in excess of 46%. ALJ Mehr also recommended a Phase II proceeding to allow the Company to recover the rehabilitation costs of the leach fields. Thereafter, the Parties continued settlement discussions which led to this stipulation:

III. Stipulation

11. As provided by the MOU, Montague Sewer Company's total rate base for purposes of this proceeding is agreed to be \$260,914.

12. The Parties agree that an overall rate of return of 8.28% is appropriate, including a return on equity of 9.75%. The Parties further agree that utilizing an overall rate of return of 8.28% results in an additional revenue requirement of \$10,600 above test year sewer revenues of \$103,790 as shown on Schedule A of the MOU. MOU, p.3.

13. Furthermore, the Parties agree that Petitioner will be permitted to amortize its deferred sludge hauling expenses over a 20 year period without interest. This amortization will result in a reduction from the annual amount recommended by Judge Mehr to \$28,516 per year.

The combined revenue increases totals \$39116 and equates to an overall rate increase of 37.69%, as shown on Schedule A-1.

14. The revenue requirement increase stipulated to herein is the level of revenue appropriate to ensure that Montague Sewer Company will continue to provide safe, adequate and proper wastewater service to its customers.

15. Attached to this Stipulation, as Exhibit B, are revised tariff pages reflecting the required changes in rates which the Parties request that the Board approve along with this Stipulation. The Parties agree that the attached tariff pages reflect the agreement of the Parties and recommend that the Board adopt them in their entirety.

IV. Effect of Stipulation

16. This Stipulation is the product of extensive negotiation by the signatories, and it is an express condition of the settlement embodied by this Stipulation that it be accepted by the Board in its entirety without modification or condition. It is also the intent of the signatories to this Stipulation that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein. The Parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken from the order adopting same as to those issues upon which the Parties have stipulated herein. The Parties agree that the within Stipulation reflects mutual balancing of various issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Parties hereto expressly and jointly state they would not have signed this Stipulation had any terms been modified in any way. In the event any particular provision of this Stipulation is not accepted and approved by the Board, then any Party hereto materially affected thereby shall not be bound to proceed under this Stipulation. The Parties further agree that the purpose of this

Stipulation is to reach fair and reasonable rates, and that it will avoid protracted and costly litigation of certain issues and that with respect to any policy or other issues which were compromised in the spirit of reaching an agreement, none of the Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Board in any other proceeding, as such agreements pertain only to this matter and to no other matter. By this Stipulation no Party agrees to waive or forgo any right or privilege which it possesses at law.

7. This Stipulation may be simultaneously executed in several counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts shall together constitute one and the same instrument consisting of several counterparts.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation of Settlement to be duly executed as of the date set forth below.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

Dated:

8/25/05

MONTAGUE WATER COMPANY

By:

Walter G. Reinhard
Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

Dated: _____

By: _____

Susan E. McClure, Esq.
Assistant Deputy Ratepayer Advocate

PETER C. HARVEY, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

Dated: _____

By: _____

Babette Tenzer, Esq.
Deputy Attorney General

05 AUG 26 PM 2:00
BOARD OF PUBLIC UTILITIES
REMARK, N.J.

RECEIVED
MAIL ROOM

MONTAGUE WATER COMPANY

Dated

By: _____
Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

Dated:

8/30/

By:

Susan E. McClure, Esq.
Assistant Deputy Ratepayer Advocate

PETER C. HARVEY, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

Dated:

By:

Babette Tenzer, Esq.
Deputy Attorney General

MONTAGUE WATER COMPANY

Dated: _____

By: _____
Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

Dated: _____

By: _____
Susan E. McClure, Esq.
Assistant Deputy Ratepayer Advocate

PETER C. HARVEY, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

Dated: 8/31/05

By: Babette Tenzer
Babette Tenzer, Esq.
Deputy Attorney General

MONTAGUE SEWER COMPANY
BPU DOCKET NO. WR03121035
OAL DOCKET NO. PUCRA 01351-2004N
REVENUE REQUIREMENT CALCULATION
Schedule A-1

	<u>Settlement</u> <u>MOU</u>	<u>Deferred</u> <u>Sludge Hauling</u> <u>Cost</u> <u>\$500,000</u> <u>20 Years</u> <u>Excluding MOU</u>	<u>MOU Settlement</u> <u>Including</u> <u>Deferred</u> <u>Sludge Hauling</u> <u>Cost</u> <u>\$500,000</u> <u>20 Years</u>
1. Rate Base	\$ 260,914		\$ 260,914
2. Rate of Return	8.287%		8.287%
3. Income Requirement	\$ 21,622		\$ 21,622
4. Utility Operating Income @ Present Rates	\$ 15,697		\$ 15,697
5. Utility Operating Income Deficiency	\$ 5,925		\$ 5,925
6. Revenue Conversion Factor	1.7891		1.7891
7. Revenue Requirement Deficiency	\$ 10,600		\$ 10,600
8. Present Revenues	\$ 103,790	\$ 103,790	\$ 103,790
9. Add't Rev - Sludge Hauling Amortization		\$ 28,516	\$ 28,516
10. Proposed Revenues	\$ 114,390	\$ 132,306	\$ 142,906
11. Percentage Increase	10.21%	27.47%	37.69%
12. Cumulative Increase \$			\$ 39,116
13. Cumulative Increase %			37.69%
Current Monthly Rate	\$28.11	\$ 28.11	\$ 28.11
Current Annual Rate	\$337.32	\$ 337.32	\$ 337.32
Proposed Monthly Rate	\$30.98	\$ 35.83	\$ 38.70
Proposed Annual Rate	\$371.77	\$ 430.00	\$ 464.45

8. Sewerage service may be discontinued by the Company for any of the following reasons:

(a) For non-payment of a valid bill for service based on the rates approved by the Board and contained in the utility's tariff. Customers unable to pay the full bill shall be afforded the opportunity to enter into a reasonable deferred payment agreement. Any check returned unpaid shall result in a charge of \$25.

(b) For the refusal to admit the proper representative of the company who requires admission to the premises.

(c) All notices herein of discontinuance shall be delivered to the owner personally or by registered mail, addressed to the last address of the owner listed in the records of the Company. On all notices of discontinuance to residential customers, there shall be included:

(1) A statement that the utility is subject to the jurisdiction of the New Jersey Board of Public Utilities and the address and phone number of the Board. The telephone number of the Board to be indicated on such statement are (973) 648-2350 and 1-800-624-0241 (toll free).

(2) A statement that in the event the customer is either unable to make payment of a bill or wishes to contest a bill the customer should contact the utility. The notice shall contain information sufficient for the customer to make appropriate inquiry.

(3) A statement that if the customer is presently unable to pay an outstanding bill, the customer may contact the utility to discuss the possibility of entering into a reasonable deferred payment agreement. In the case of a residential customer receiving more than one different service from the same utility, the statement shall state that deferred payment agreements are available separately for each utility service.

Issued: August 19, 2005

Effective: September 14, 2005

Issued by: Lawrence N. Schumacher, President
Montague Sewer Company
266 Clove Road
Montague, New Jersey 07827

Issued pursuant to Order of the New Jersey Board of Public Utilities dated September 14, 2005 in Docket No. WR03121035.

-
- (d) The utility shall make every reasonable attempt to determine when a landlord-tenant relationship exists at residential premises being serviced. If such a relationship is known to exist, discontinuance of residential service is prohibited unless the utility has posted notice of discontinuance in the common areas of multiple family premises and has given individual notice to occupants of single and two family dwellings and has offered the tenants continued service to be billed to the tenants, unless the utility demonstrates that such billing is not feasible. The utility shall not be held to the requirements of this provision if the existence of a landlord-tenant relationship could not be reasonably ascertained.
9. The Company reserves the right subject to approval of the Board of Public Utilities of the State of New Jersey, to change, take from, or add to the foregoing rules, regulations, terms and conditions.
10. Customers wishing to discontinue service must give notice to that effect. Where such notice is not received by the utility, the customer shall remain liable for service until notice is received.
11. Rates apply to normal sewerage as defined by the N.J. Department of Environmental Protection ("DEP"). The Company reserves the right to require pretreatment prior to discharge into the sewer system if the sewerage contains harmful substances such as gasoline, P.C.B.s, oil, explosive liquids, grease, phenols, acid, alkalines, lint, excessive detergents or any other toxic or hazardous substances as defined by DEP. This paragraph includes but is not limited to laundromats or dry cleaners where the owner will be required to provide a screen or filter to remove excessive lint before discharge into the sewer system.
12. Any customer making payment with a check returned for insufficient funds shall be charged \$25, said sum payable with the original amount due.

Issued: August 19, 2005

Effective: September 14, 2005

Issued by: Lawrence N. Schumacher, President
Montague Sewer Company
266 Clove Road
Montague, New Jersey 07827

Issued pursuant to Order of the New Jersey Board of Public Utilities dated September 14, 2005 in Docket No. WR03121035.

RATE SCHEDULE NO. 1

Residential Service

Applicable to use of service for:

Residential Service

Character of Service:

Continuous

Rate:

For each dwelling unit: \$38.70 per month

Payable monthly
in arrears.

Terms of Payment:

Net cash, becoming delinquent
21 days from date of billing

Issued: August 19, 2005

Effective: September 14, 2005

Issued by: Lawrence N. Schumacher, President
Montague Sewer Company
266 Clove Road
Montague, New Jersey 07827

Issued pursuant to Order of the New Jersey Board of Public Utilities dated September 14, 2005
in Docket No. WR03121035.

RATE SCHEDULE NO. 1

Club House Service

Applicable to use of service for:

Club House in "High Point Country
Club Community"

Character of Service:

Continuous

Rate:

\$1,935.40 per month

Payable monthly
in arrears.

Terms of Payment:

Net cash, becoming delinquent
21 days from date of billing

Issued: August 19, 2005

Effective: September 14, 2005

Issued by: Lawrence N. Schumacher, President
Montague Sewer Company
266 Clove Road
Montague, New Jersey 07827

Issued pursuant to Order of the New Jersey Board of Public Utilities dated September 14, 2005
in Docket No. WR03121035.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on MAY 09 2005**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 1351-04

AGENCY DKT. NO. WR03121034

**I/M/O THE PETITION OF MONTAQUE
WATER & SEWER COMPANIES FOR
AN INCREASE IN RATES FOR WATER
AND SEWER SERVICE,**

Mike Kammer and Alex Moreau, Esq., Board of Public Utilities
(Peter C. Harvey, Attorney General of New Jersey, attorney)

Dr. Fred Grygiel, Office of Economist, Board of Public Utilities
(Peter C. Harvey, Attorney General of New Jersey, attorney)

Maria L. Moran, Chief, Bureau of Conservation and Engineering
(Peter C. Harvey, Attorney General of New Jersey, attorney)

Babette Tenzer, Esq.
Peter C. Harvey, Attorney General of New Jersey, attorney)

Dante Mugrace, Bureau Chief, Bureau of Rates
(Peter C. Harvey, Attorney General of New Jersey, attorney)

Susan E. McClure, Esq., Division of Ratepayer Advocate
(Peter C. Harvey, Attorney General of New Jersey, attorney)

Walter G. Reinhard, Esq.
(Norris, McLaughlin & Marcus, attorneys)

Dante Mugrace, Bureau Chief, Bureau of Rates
(Peter C. Harvey, Attorney General of New Jersey, attorney)

BEFORE MICHAEL J. MEHR, ALJ:

In major rate cases before the New Jersey Board of Public Utilities ("Board"), there normally exists the "luxury" of a fairly wide range of reasonableness to enable the Board to set the proper balance between safe adequate and proper service and just and reasonable rates. This unfortunately is not the case here. This is a small sewer rate case with a base of 275 customers. This is a small sewer company under orders from the New Jersey Department of Environmental Protection ("DEP") to physically truck its sewage off-site for disposal at a cost of approximately \$20,000/month, or \$73.00 a month additional per customer.

Obviously, all appropriate reasonable regulatory methodologies need be employed to mitigate rate shock and yet achieve just and reasonable rates, namely recovery of legitimate expenses and the cost of capital.

PARTIAL STIPULATION

Preliminarily, the parties diligently worked out a partial stipulation memorialized in a Memorandum of Understanding ("MOU") presented to the undersigned at hearing on October 21, 2004 disposing of all ancillary issues and creating an additional modest revenue requirement of \$10,000, which I endorse. Obviously, monthly hauling expense of over \$20,000 eats up all rate of return and puts the company at a loss without reasonable expense recovery.

The key issues remaining and inextricably related are (1) How to reasonably amortize hauling expense; (2) A level of carrying costs (if any) on the cost of hauling costs not presently recovered; (3); Whether and to what extent fault or prudence should be factored into just and reasonable rates; and (4); Whether a Phase II of this case to recognize .

AMORTIZATION OF MANDATED COSTS

Notwithstanding the modest dollars involved, both the Board staff and the Advocate diligently contributed to the record in this proceeding due to the obvious disconnect between proper service and reasonable rates. Their diligence is to be commended. All parties recognized that some level of amortization of hauling expenses is necessary – from three years for the company to twenty years for the Advocate and Staff. Upon evaluation of all testimony, I cannot but conclude that the longest possible period - twenty years – is in order to mitigate rate shock, however with the balancing proviso that the cost of capital to pay for these actual expenses not currently recovered must be recognized.

CAPITAL COST OF DEFERRED EXPENSES

Cost of capital is critical to a fair result in this case. Without carrying costs, recovery of hauling expense amortized over twenty years is essentially written off for financial and accounting purposes.¹ The company's books will show no rate of return and an operating loss. With carrying costs, the expense is treated as though presently recovered in rates, so the company's financials do not disappear. The concept is that recognition of carrying costs overtime is the same as getting current full recovery of the expense. Without interest, the present value of the expense is about 50%: half the expense has to be written off.

The Advocate and Staff in a well meaning attempt to mitigate rate shock would deny all carrying costs. The result is unjust and unreasonable rates by definition, No rate of return, Operating loss. Since the Board recognizes that amortization of expenses beyond a short period (usually a year) has a capital cost, and permits immediate recognition of the expense in financials for major utilities (In Re JCPL, Dkt.

¹ The stipulated rate of return in the Memorandum of Understanding attached requires \$21,000/yearly in operating income. In contrast, \$20,000/month in hauling expense amortized over twenty years without an interest component results in a present value of recovery of about 50%, i.e. 10,000/month. Writing off 10,000 of expense per month (without interest) quickly eats up all rates of return as well as creating an operating loss. Without carrying costs, there is no way to satisfy the statutory standard of reasonable rates

ER02080506, dated May 17, 2004. In Re Atlantic Electric 113 PUR 4 407, 1990) it is critical that it do so for tiny utilities, where the impact is critical.

Aside from the destruction of the company's financials by non-recognition of actual hauling expenses, it gives the wrong signal to small water and sewer utilities. For decades the Board has utilized every creative device to encourage capitalized utilities to take over chronically plagued small water and sewer "systems." Here, Utilities Inc, a middle size holding company has taken its first venture in New Jersey by taking responsibility for modernizing this utility. If it can't cover its costs, what other properly capitalized utility would invest in these systems in New Jersey?

LEVEL OF CARRYING COSTS

The related issue is the reasonable level of carrying costs on unrecovered expenses. While the company's position is that the holding company's overall cost of capital (8.75%) is reasonable, based on the entire record, I would **FIND** a company of Utilities Inc financials, less than blue ribbon, and in a risky business (small water/sewer systems) would carry a cost of borrowing in the 5.5% range. If we were to have the N.J. utility "stand alone" as to borrowing costs, there would not be money at any rate.

FAULT OR PRUDENCY POSITIONS

The issue of prudence or fault was presented by the Advocate with supporting testimony and Board Staff. It is crystal clear to me that the fault argument is pursued as a device to support a "sharing" of pain in the rate recognition of State mandated expenses *i.e.* hauling costs. The factual problem is that this is not a case of chronic mismanagement, such as *In Re Valley Road Sewerage*, 285 N.J. Super 202, (1995).

and the Sand Rates standard, 61 N.J. 12, 23, 1974, that a utility is entitled to the opportunity to achieve a reasonable return.

The Advocates witness courageously pointed out that there was no operational mismanagement. There is nothing in the record to suggest utility mismanagement. Rather, the "fault" argument runs that the company took too long in getting a remediation plan approved by DEP to rebuild leech fields so that sludge hauling could cease. (This elementary system is first, individual septic tank treatment, two, additional capture of any remaining solids, and three, "leeching" of liquids into the ground for final natural breakdown).

I find this entire approach to be artificial, after the fact and unnecessary to achieve a fair result. The company had a terrible time getting its retained experts to get a plan through DEP. It took a long time to get it right. DEP ordered hauling in January 2003 and a plan to obviate hauling ~~sales~~ satisfactory to the company and DEP was finalized in January 2005.

However, I have taken the timeline into consideration in fixing the level of hauling expense to be recognized herein – that is how far outside the test year to recognize actual expenses. I find it unnecessary to make any findings of fault on DEP paperwork in order to achieve a fair result and share the risks of this systems' breakdown. Equitable balancing does not require a finding of ~~fact~~ where everyone was doing their best with an antiquated system.² The company's only real fault or lack of due diligence is coming to New Jersey and taking over this system in the first place. That is punishment enough.

DEP ORDERED HAULING COSTS

Specifically, the company requests recognition of actual hauling expenses of \$540,000 through October, 2004 (P-5). The Advocate and Staff would cut off hauling expense in October 2003 (\$320,000) upon the argument that DEP permits should have been obtained sooner, so the utility plant could be rehabilitated and hauling costs

² The Board, of course, evaluates management prudence in light of the circumstances and options then existing. It does not recognize hindsight or wishful thinking. In RE JCP&L, ER02080506, May 17, 2004. The company is under every incentive to get DEP approvals in place for permanent improvements to get out from under these financially crippling hauling costs.

stopped by that time. This is a well-meaning but after-the-fact postulate to keep cost recovery down. While not buying into the fault argument, I have considered the testimony and positions in light of an overall reasonable result and would recognize herein hauling costs of \$446,000 to June, 2004, known at the time of hearing in October 2004. I will not go out of the test year further, so there is a substantial deduct from requested hauling costs of about \$100,000.

PHASE II:

The last key issue is the absolute need, in my view, for a Phase II to consider capital costs to fix the utility plant and get out from under these horrendous hauling costs.³ This investment is now projected in the range of half a million dollars. Obviously, the rate of return on that investment would cost less than continuing hauling costs. One replaces the other. They are factually and conceptually inextricably related. To require the company to refile a full blown rate case to address this one issue, as suggested by the Advocate and Staff, would result in a waste of company and State resources without any benefit except to extend the day of reckoning.

I reiterate, getting plant improvements in is far cheaper than hauling costs. As to whether continuing hauling costs not recognized herein can be introduced in a Phase II, I would leave that to the sound discretion of the ALJ then presiding, subject of course, to Board review at that time.

SUMMARY

In summary, I find on the record that it would be unfounded, unnecessary and counterproductive to find management fault as a rationale to deny State mandated

³ In commending all parties for their diligence in this small but not insignificant case, I would further mention and commend that the company attorney never attempted to shift responsibility to DEP for the need to haul already treated waste off-site. Nor did he argue that Utilities Inc has no ties to New Jersey but for his venture and that its financials could justify bankruptcy or abandonment. I would respectfully suggest however that it is not too late to treat this small sewer system problem in a nonadversarial context - pulling together in a conference the expertise of the BPU and DEP to get some realistic cost effective incremental steps in place and stop this hauling expense which exceeds the company's revenues.

incurred expenses. Absent this approach, I have still appropriately factored in a balancing and sharing of risk which reduces the revenue requirement, (1) by limiting recovery of out-of-pocket hauling expenses to \$446,000, (2) by setting an extended amortization period for the expense as though it were a capital asset at 20 years, and (3) by setting a cost of capital at debt cost (5.5%) not overall rate of return for actual expenses incurred but where recovery is deferred.

There can be no actual dispute that to cut deeper, as suggested by the Advocate and Staff, would necessarily result in a zero rate of return and further discourage private investment to come to New Jersey and assume responsibility for the chronic problems of antiquated small water and sewer operations.

Based on the entire record in this proceeding, I **FIND** as just and reasonable:

1. A disallowance of actually incurred state mandated hauling expenses to \$446,000
2. An amortization of recognized hauling expenses over 20 years, akin to amortization of a capital asset.
3. A cost of capital for deferred expenses at 5.5% at reasonable debt cost rather than stipulated rate of return.
4. A Phase Two for recognition of asset improvements required by DEP to replace hauling expenses.
5. That company management has come to New Jersey in good faith with capital investment to improve small water and sewer operations and is not guilty of fault or misconduct.
6. That recognition of hauling costs as specified above does not change the stipulated rate of return.
7. That non-recognition of carrying costs on deferred hauling expense would result in a zero rate of return.

therefore **CONCLUDE**, based on the entire record and applicable law, as follows:

1. An increase in rates as to hauling costs based on a 20 year amortization at 5.5% interest is just and reasonable.
2. Non-recognition of carrying costs on the unamortized balance of hauling costs results in a zero rate of return and is unjust and unreasonable.⁴

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A. 52:14B-10*.

⁴ The petitioner requested a 300% increase with immediate recovery of mandated expenses. The above result translates into an approximate increase of \$12.00/month per customer or 36%, plus the stipulated amount. If in the Board's judgment this is too much to digest at once, I would recommend two increases one year apart on a self-executing basis rather than further erosion of a very legitimate revenue requirement

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 2005
3 April
DATE

Michael J. Mehr
MICHAEL J. MEHR, ALJ/ta

E-mail Receipt of Initial Decision Confirmed by the Board of Public Utilities on:

5/3/05
DATE

Edward L. Berke
BOARD OF PUBLIC UTILITIES

Mailed to Parties:

MAY 09 2005
DATE
sej

Laure Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

2001 OCT 15 P. 12:43

IN THE MATTER OF THE PETITION
OF MONTAGUE SEWER COMPANY
FOR AN INCREASE IN RATES FOR
SEWER SERVICE AND FOR A
PHASE II INCREASE IN RATES FOR
SEWER SERVICE

) Docket Nos. WR03121035 (Sewer)
)
)
) OAL Docket No. PUCRA01351-2004
)
) **MEMORANDUM OF
UNDERSTANDING**

Montague Sewer Company (hereinafter "the Company," "Petitioner," or "Montague Sewer"), the Division of the Ratepayer Advocate ("Ratepayer Advocate"), and Staff of the New Jersey Board of Public Utilities ("Staff") (collectively, "the Parties"), having been unable to settle all the outstanding issues in this proceeding, and desiring to limit the potential issues for evidentiary hearings, enter into this Memorandum of Understanding to set forth the agreements reached and the issues preserved for litigation.

I. Introduction

1. On December 31, 2003, Montague Sewer Company (hereinafter "Petitioner" or "Montague Sewer") filed a petition with the Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.11 and 5.12 which, as subsequently amended, requested an increase in rates for sewer service of approximately \$281,378 or 270% above present rate revenues for the test year period ended December 31, 2003. Petitioner also requested a Phase II increase for sewer service to account for capital expenditures described below.

2. The major component of the Amended Petition for a sewer rate increase is the deferred costs of wastewater hauling and disposal ordered by NJDEP because

two of Petitioner's leach fields failed during the winter of 2003. When the underground disposal systems failed, NJDEP ordered Montague Sewer to truck the wastewater to another facility and to replace the leach fields. Subsequently, in the Spring of 2003, NJDEP permitted limited use of the existing leach fields 3A and 3B (the "Permitted Facilities") pending replacement of these disposal beds. A permit for the full replacement of leach fields 3A and 3B was issued by NJDEP on July 30, 2003. Petitioner is attempting to gain NJDEP approval to reduce the scope of the Permitted Facilities, thus allowing continued use of the existing disposal beds while reducing the capital cost of the needed improvements. A Phase II was requested to account for the capital costs necessary to rebuild the leach fields that failed and two other leach fields 2A and 2B, which are in jeopardy.

II. Procedural History

3. On March 24, 2004, a prehearing conference was held by telephone before Hon. Stephen Weiss, ALJ and a Prehearing Order was issued by Judge Weiss. Thereafter, the case was transferred to Hon. Michael J. Mehr, ALJ.

4. After proper notice, a public hearing was held before Judge Mehr on May 27, 2004 at Township Hall in the Township of Montague. A number of customers and one public official appeared and presented statements opposing the level of the proposed rate increase. This Memorandum of Understanding addresses those issues. Neither the Township nor any other party intervened in the case.

5. The Parties, as a result of analyzing the testimony and exhibits submitted by Petitioner and the Ratepayer Advocate, conferences, negotiations,

responses to discovery requests, and a public hearing, have conducted settlement negotiations and now agree as follows:

III Stipulated Matters

6. Montague Sewer Company's total rate base for purposes of this proceeding is agreed to be \$260,914.

7. The Parties agree that an overall rate of return of 8.28% is appropriate, including a return on equity of 9.75%.

8. The Parties agree that utilizing an overall rate of return of 8.28% results in an additional revenue requirement of \$10,600 above test year sewer revenues of \$103,790, or approximately 10%, shown on Schedule A below to account for all rate base rate of return, revenue and expense items except the deferred wastewater hauling expenses and the additional capital costs to be incurred both which are discussed in Section IV below.

Schedule A

Rate base	260,914
Rate of Return	8.28%
Required Operating Income	21,604
Test year Operating Income	<u>15,697</u>
Deficiency	5,925
Revenue Conversion factor	1.789*
Revenue Requirement	10,600

The remaining issues are reserved for an evidentiary proceeding.

9. The Parties agree that a revenue increase of \$10,600 or approximately 10% over current revenues is an appropriate result for the stipulated matters in this proceeding.

IV. Reserved matters

10. The principal purpose of the Phase II proceeding was to examine the capital costs of NJDEP mandated improvements to the Company's sub-surface disposal system, i.e., its leach fields. During discovery and the subsequent negotiation, the Parties agreed that the issue of proper amortization of the costs of the NJDEP mandated wastewater hauling is integrally related to the capital costs to rehabilitate the system; however, the Parties have been unable to agree regarding the proper ratemaking treatment of the deferred wastewater hauling costs and the related capital costs. Therefore, the Parties agree that those matters should be addressed in an evidentiary proceeding. Judge Mehr has set three hearing dates in October (October 21, 22 and 25, 2004) at which time, based on Petitioner's best estimate, the NJDEP will have issued the modified permits for the reconstruction projects regarding leach fields 3A and 3B and said projects will have been commenced and moving toward completion.

11. The Parties agree that the following issues are reserved for evidentiary hearing:

- a. Whether rate base should reflect the capital costs of the improvements to leach fields 3A/3B and, if applicable, 2A/2B and depreciation reserves brought forward to the appropriate date;

- b. Deferred wastewater hauling costs will be examined to determine the appropriate amortization period, interest rate, if any, and overall annual expense increase.

12. This Memorandum of Understanding may be executed in as many counterparts as there are signatories, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be duly executed as of the date set forth below for the express purpose of submitting it to Judge Mehr for approval.

MONTAGUE SEWER COMPANY

Dated: 10/1/04

By: 
Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA


SEEMA M. SINGH, ESQ.,
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

Dated:

By: _____
Susan E. McClure, Esq.
Assistant Deputy Ratepayer Advocate

PETER C. HARVEY
Attorney General of New Jersey
Attorney for the Staff of the New Jersey
Board of Public Utilities

Dated: September 29, 2004

By: 
Alex Moreau
Deputy Attorney General

- b. Deferred wastewater hauling costs will be examined to determine the appropriate amortization period, interest rate, if any, and overall annual expense increase.

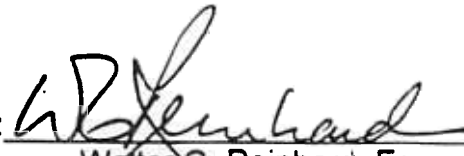
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MONTAGUE SEWER COMPANY

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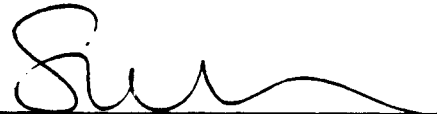


Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA

SEEMA M. SINGH, ESQ.,
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

Dated: 9/27/04

By:



Susan E. McClure, Esq.
Assistant Deputy Ratepayer Advocate

PETER C. HARVEY
Attorney General of New Jersey
Attorney for the Staff of the New Jersey
Board of Public Utilities

Dated:

By:

Alex Moreau
Deputy Attorney General

MONTAGUE WATER COMPANY

Dated: _____

By: _____

Walter G. Reinhard, Esq.
Norris, McLaughlin & Marcus, PA

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

Dated: _____

By: _____

Susan E. McClure, Esq.
Assistant Deputy Ratepayer Advocate

PETER C. HARVEY, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

Dated: 8/31/05

By: Babette Tenzer

Babette Tenzer, Esq.
Deputy Attorney General